



May 12, 2025

By electronic submission to MBX.OMB.DeregIdeas@omb.eop.gov

Office of Information and Regulatory Affairs
725 17th Street NW,
Washington, DC 20503

Re: Request for Information: Deregulation

Dear Director Vought:

The Online Lenders Alliance (OLA) welcomes the opportunity to respond to the request for information issued by the Office of Budget and Management regarding those final rules currently in effect that are unnecessary, unlawful, unduly burdensome or unsound and thus should be rescinded.

I. About OLA

OLA represents the growing industry of innovative companies that develop and deploy pioneering financial technology, including proprietary underwriting methods, sophisticated data analytics and non-traditional delivery channels, to offer online consumer loans and related products and services. OLA's members include online lenders, vendors and service providers to lenders, consumer reporting agencies, payment processors and online marketing firms.

Fintech companies are at the vanguard of innovative online tools that reach new customers, prevent, and mitigate fraud, manage credit risk, and service loans. As technology evolves and the public's consumer comfort with online financial transactions grows, protecting consumers will be more important than ever. OLA is leading the way to improve consumer protections, with a set of consumer protection standards to ensure that borrowers are fully informed, fairly treated, and using lending products responsibly. To accomplish this, OLA members voluntarily agree to hold themselves to a set of Best Practices, a set of rigorous standards above and beyond the current legal and regulatory requirements. These are standards that OLA members, the industry, and any partners with whom OLA members work use to stay current with the changing legal and regulatory landscape. OLA Best Practices cover all facets of the industry, including advertising and marketing, privacy, payments, and interacting with consumers on their mobile devices.

Most importantly, OLA Best Practices are designed to help consumers make educated financial decisions by ensuring that the industry fully discloses all loan terms in a transparent, easy-to-understand manner.¹

Much of the innovation undertaken by OLA members has given consumers greater control over their financial future. This is especially the case when it comes to access to capital. Whether borrowing for major purchase, paying for critical auto repairs or other emergencies, or just bridging the gap between paychecks, the ability to find and secure credit is often a determining factor in a consumer's financial wellbeing. Online lenders provide benefits to consumers, particularly those in underserved communities, with fast, safe, and convenient choices that simply are not available through traditional lending markets.

II. Overview

OLA would like to flag two rules published by the Consumer Financial Protection Bureau (CFPB; Bureau), the Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders and the Payday, Vehicle Title, and Certain High-Cost Installment Loans, both of which are unnecessary and burdensome, limiting consumers' access to credit. While the Bureau has indicated that it will not prioritize enforcement or supervision of both rules, OLA would encourage their full repeal.

A. Nonbank Registry

The nonbank registry rule requires "certain nonbank covered person entities" to register with and submit information to the CFPB when they become subject to certain orders from local, state or federal agencies or courts involving violations -whether proven or not- of consumer protection laws. The registry applies to all nonbanks that are considered covered persons regardless of whether the nonbank is already being supervised or examined by CFPB. Furthermore, the rule requires certain supervised nonbanks to file a document from a senior executive attesting to compliance with any consent orders. Under the rule, all registration information is publicly available on the Bureau's website. According to the CFPB, this allows for better monitoring and more effectively reduces the risks to consumers.

OLA has raised serious concerns about the Bureau's registry, which ultimately appears to be more of a "name and shame" scheme and a beneficial resource to trial attorneys rather than a useful tool for consumers and regulators.² It is also duplicative of efforts by the states, the Nationwide Multistate Licensing System (NMLS) and even the CFPB's own consumer complaint registry.

1. The Registry's Purpose is Inconsistent with Statutory Authority.

In justifying this rule, the Bureau cites its market-monitoring directive under Dodd/Frank, which gives CFPB the ability to request information and monitor the market for trends to drive further rulemaking. Historically, this has been employed by the Bureau for studies and information collection. However, the registry proposed by the CFPB is not just an information gathering

¹ Online Lenders Alliance Best Practices <https://onlendlendersalliance.org/best-practices/>

² [Online Lenders Alliance comment letter 3/31/2023](#)

exercise but rather is a substantive requirement. Failure to comply with the Registry's exacting requirements exposes the company to the potential of millions of dollars in civil penalties, making it inconsistent with the statutory basis outlined in Dodd/Frank for the Bureau's market monitoring authority and past agency practices.

The Bureau also purported to ground its creation of the nonbank registry in its nonbank supervision authority. This authority almost certainly forms the entirety of the Bureau's claimed ability to promulgate the rule, since its market monitoring functions are not limited to nonbanks. But the Bureau's statutory authority to "prescribe rules to facilitate supervision of" nonbanks³ does not extend to mandating that nonbanks (and only nonbanks) publicly disclose when they are subject to consent orders and publicly attest to compliance with those orders. Rather, when read as part of the general grant of supervisory authority over nonbanks, it becomes clear that the grant of registration authority was to help the Bureau identify which entities are within its supervisory jurisdiction, not a backdoor way to impose substantive public disclosure requirements on nonbanks.

The Bureau's nonbank supervisory authority is relatively broad, extending to any institution that "offers or provides to a consumer any private education loan" or "offers or provides to a consumer any payday loan."⁴ This could encompass thousands if not tens of thousands of lenders across the country, especially given that the term "payday loan" is not defined by the statute. Further, the Bureau is authorized to expand its supervisory jurisdiction over nonbanks by promulgating rules to define "a larger participant of a market for other consumer financial products or services."⁵ The Bureau would have no way of implementing its statutorily required risk-based supervision program without first knowing the universe of entities that is subject to its supervisory jurisdiction without the related authority to make those institutions register, which would "facilitate supervision of persons" subject to that authority.⁶ The Bureau had no authority to transform this registration authority into a general purpose public disclosure requirement touching all nonbanks.

2. The Registry Has Added to Growing Regulatory and Compliance Burdens.

Failure to comply with the registry is an independent violation of CFPB regulations and could lead to significant federal penalties against both the entity and individuals. Furthermore, the compliance and related attestation obligation with respect to state or local orders and other regulatory actions would effectively make these essentially state and local orders enforceable by the Federal CFPB.

This represents significant new compliance burdens and unnecessary legal risk on affected nonbank financial entities, particularly smaller fintech companies that often possess limited resources. These companies will have to divert funding that could be directed towards innovation and serving their customers to monitor all resolutions, including informal consumer mediation services such as those provided by many state and local agencies, as well

³ 12 U.S.C. § 5514(b)(7)(A).

⁴ Id. at § 5514(a)(1)(D)–(E).

⁵ Id. at § 5514(a)(1)(B).

⁶ Id. at § 5514(b)(7)(A).

as investing in the development of new reporting mechanisms. They have also had to expend resources on additional staff training to ensure that reports are made in a timely manner.

This rule has become a substantial new cost driver, impacting financial services providers' ability to offer products and services to their customers.

3. The Registry is Redundant to Current Efforts at the State and National Level.

Many of the requirements contained in the registry are repetitive of existing efforts at the state and national levels. Currently, nonbanks are required to hold state licenses to engage in a variety of regulated activities, including but not limited to commercial and residential mortgage brokerage, lending, loan servicing, lead generation, commercial financing, private student lending and servicing, as well as a host of other regulated industries. To obtain a license, a company applies through the NMLS, which is a nationwide, multi-state license registry. While there are some licenses that are administered outside this process, by and large most are covered in the NMLS.

During this process a company is required to submit an MU1 Form⁷ that includes disclosure questions and complete a disclosure explanation section that requires a company to answer a host of regulatory action disclosure questions. As part of this process, companies are required to disclose whether, in the past 10 years, any state or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO):

- Found the entity or a control affiliate to have made a false statement or omission or been dishonest, unfair or unethical.”
- “Found the entity or a control affiliate to have been involved in a violation of a financial services-related [regulation] or [statute].
- Found the entity or a control affiliate to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted.
- “Entered an order against the entity or a control affiliate in connection with a financial services-related activity; or
- “Denied, suspended, or revoked the entity’s or a control affiliate’s registration or license or otherwise, by order, prevented it from associating with a financial services-related business or restricted its activities.”⁸

Under this process, companies are required to answer affirmatively any time there is a public consent order or other action and provide an explanation, including a copy of the order. This covers final adverse actions, consent degrees and orders in which the respondent has neither admitted nor denied the findings. This encompasses much of what is considered a covered order

⁷[https://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/Company%20\(MU1\)%20Form%20Filing%20Instructions.pdf](https://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/Company%20(MU1)%20Form%20Filing%20Instructions.pdf)

⁸ [Microsoft Word - NMLS Company Form \(nationwidelicensingsystem.org\)](https://www.nmls.org/microsoft-word-nmls-company-form-nationwidelicensingsystem.org)

by the Bureau. That means any action entered into with a regulator that is not labeled as some type of private settlement agreement or a minor administrative penalty would be considered public, requiring the entity to answer affirmatively to the NMLS disclosure questions and provide the proper explanation.

Once a respondent has submitted an affirmative response and provided the required explanation, other state regulators are notified of the action, therefore accomplishing one of the stated goals of the registry, namely the need to better inform consumers. It should be noted that state regulators already have the discretion to list these actions on a specific registry.⁹ In addition, the State Regulatory Registry (SRR) that governs the NMLS has created “NMLS Consumer Access,”¹⁰ a public-facing website that consumers can utilize to look up lenders, brokers or service providers to see what enforcement actions exist.

The CFPB’s registry also has many of the same defects of the Bureau’s disclosure of incomplete and unreliable complaint data from its consumer complaint database. In the same way that many of the complaints are based on faulty evidence, the registry would require registration of consent orders, not just litigated cases or judgments. In most consent orders, the company does not admit any wrongdoing (a statement the government entity has agreed to include); indeed, enforcement actions are often resolved through consent orders – not because the company is engaged in any wrongful conduct alleged by the enforcement agency but because enforcement actions are very costly to defend. This would make the proposed registry an unreliable measurement of risk to consumers.

4. Registration and Attestation Record-Keeping is Burdensome, Without Clear Benefits to Consumers.

A nonbank identified by name as a party subject to a covered order will have 90 days to register. Covered orders have a fairly lengthy lifespan and are assumed to be in existence for 10 years from the effective date, unless there is an expressly provided termination date. However, most regulatory and supervisory agencies are reluctant to agree to termination dates.

In addition to the general requirements that entities submit a copy of the order that identifies the issuing government entity, effective date, expiration date, and any laws that were violated or alleged, a subset of entities that are subject to supervisory jurisdiction by the CFPB, and that meet other thresholds, would face an additional requirement to have an executive file an attestation that their company is in full compliance with the terms of the order.

The Bureau claims two primary benefits: first, that there is a public interest in transparency when it comes to potentially significant orders; and second, that if publicly released, such orders would be available as a precedent in future proceedings. As to the first claimed benefit around transparency, the Bureau has provided no data detailing what additional benefit this transparency would yield, either in an absolute sense or a relative sense when weighed against the drawbacks

⁹ Illinois Department of Financial and Professional Regulation’s Monthly Consolidated Reports on Enforcement Actions <https://idfpr.illinois.gov/News/Disciplines/DiscReportsDefault.asp>

¹⁰ <https://www.nmlsconsumeraccess.org/>

of publishing these orders and providing the name of the company's senior officer that has signed the attestation. In addition, making local and state consent orders effectively enforceable by the CFPB, provides a serious disincentive to settlement and efficient resolution of these claims by state and local officials.

With respect to the second claimed benefit, while financial regulators often use prior decisions and orders to inform current and future regulatory policy and supervisory actions, this can be accomplished without the need to publish these documents on a website. If the Bureau's claim is that publishing decisions and orders will help establish regulatory standards (much like the publication of enforcement/consent orders), it has offered no evidence that listing the name of the respondents enhances the public's ability to understand the facts and circumstances regarding the supervisory actions taken by the Bureau. This also would be wholly inappropriate for a regulatory agency. If the Bureau wishes to shape the conduct of regulated entities, it must enact valid regulations through notice-and-comment rulemaking, not publish a hodgepodge of consent orders and other settlements in the hope that the publication will police the conduct of market participants.

Since its inception, the Bureau has had the dual mandate of supervising larger depository institutions and certain nonbanks. This was intended by Congress to level the playing field in terms of federal consumer protection in the financial regulatory space. Since then, the Bureau has struggled with how to manage the large and diverse nonbank market. The Bureau itself has acknowledged that the potential community covered by the orders registry could be as large as 155,000 nonbanks, with the Bureau further estimating that 1 to 5 percent may have a covered order that would cause them to register.¹¹

Considering the dubious statutory authority for the registry, its redundancy, and the potential burdens it will place on nonbank entities, it appears to be little more than a "name and shame" tactic rather than a useful and productive tool. Moreover, it is a trap for the unwary nonbank who is subjected to risk of annihilating civil penalties for technical failures to comply with the Registry's detailed administrative requirements. It also provides a lever for the CFPB to enforce state and local orders to which it was never a party, and which are premised on violations of state laws and local ordinances that the CFPB has no authority to enforce. Given these types of registries currently exist in multiple other forums, in more user-friendly options, it is unclear what additional benefit consumers will derive from this registry. The group that would appear to benefit the most from the registry would be plaintiffs' attorneys and others seeking to file endless lawsuits. This would not justify the sizable compliance and regulatory costs to nonbanks, which may result in the reduction of services available to American consumers, which is why OLA recommends it repeal.

B. Payment Provisions Small Dollar Rule

The cornerstone of financial inclusion is the opportunity and ability to access credit, which leads to more independence for borrowers by providing them with more control over their own financial health. The reality, however, is that not everyone has equal access to credit despite so

¹¹ https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule_registry-of-nonbank-covered-persons_2022.pdf

many Americans needing it, oftentimes unexpectedly. Nearly 1 in 3 adults in the US have thin files or are credit invisible, which means millions of Americans are considered below prime.¹² According to the most recent federal data, more than 18 percent of households in the US are unbanked or underbanked.¹³ Looking more closely at that data, the rate among Black residents and Hispanics is 35 and 32 percent respectively for each.¹⁴

Following COVID, the demand for credit has steadily risen in the US, and the rapid rise of inflation from 2020-2024 only increased this need. The use of credit card and personal loans from banks and credit unions has increased tremendously during this time, but millions of Americans—especially those with below prime credit scores—depend on alternative credit from non-bank lenders to help successfully manage their finances. Nearly every state in the nation saw an increase in the number of users of alternative credit during this time.¹⁵

Unfortunately, the payment provisions from the Consumer Financial Protection Bureau’s 2017 Small Dollar Rule will greatly disrupt the alternative financial services market and create financial harm for all market participations, consumers and lenders alike. The Rule is unnecessary given today’s marketplace; unduly burdensome for lenders and consumers; and will hinder access to credit for many Americans.

Background

The Small Dollar Rule was promulgated in 2017 by President Obama’s Bureau Director, Richard Cordray, who had been unconstitutionally shielded from removal at the beginning of President Trump’s first term. The Rule, however, has never been enforced. Compliance was stayed by court orders for nearly eight years as a result of litigation. Then this year, before the Rule was scheduled to take effect, the Trump administration announced that it would not enforce it.¹⁶

The Rule requires the small dollar loan industry to adhere to a byzantine payment regime with collections practices and disclosures requirements that are stricter than those imposed on any other products or services (and potentially unworkable in some cases).

- The Rule imposes unique and unprecedented restrictions on a creditor’s ability to directly debit a borrower’s account to collect amounts due under a covered transaction.¹⁷ Specifically, the Rule would declare it both unfair and abusive for a creditor to attempt to withdraw payment from a consumer’s account after two failed attempts, unless the creditor has obtained a new, specific authorization from the

¹² Equifax: Access to Credit and Alternative Data Report 2023

¹³ <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-appendix-tables>

¹⁴ *id*

¹⁵ Experian 2024 Lending Trends Report

¹⁶ [CFPB Offers Regulatory Relief for Small Loan Providers, March 28, 2025](#)

¹⁷ Transactions covered by the rule are “short-term loans that have terms of 45 days or less, including typical 14-day and 30-day payday loans, as well as short-term vehicle title loans that are usually made for 30-day terms, and longer-term balloon payment loans,” as well as “longer-term loans with terms of more than 45 days that have (1) a cost of credit that exceeds 36 percent per annum; and (2) a form of ‘leveraged payment mechanism’ that gives the lender a right to withdraw payments from the consumer’s account.” Final Rule at 4. Though the rule exempts various types of loans. *Id.* at 5.

consumer allowing the creditor to debit the consumer's account again.¹⁸ The prohibition would cover "any lender-initiated debit or withdrawal of funds from a consumer's account ... regardless of the means through which the lender initiates it."¹⁹ A payment attempt is considered to have failed "when it results in a return indicating that the consumer's account lacks sufficient funds."²⁰ No fewer than three business days after learning that the second attempt has failed, the creditor also must provide the consumer with a notice outlining the consumer's rights and providing other information about the failed attempts.²¹

- The final rule also would allow a creditor to continue to initiate withdrawals from a consumer's account only "if the additional payment transfers are authorized by the consumer."²² These authorizations must include "the specific date, amount, and payment channel of each additional payment transfer."²³ The creditor cannot request authorization to reinitiate payment attempts before the required notice has been provided.²⁴ The authorization must be signed or agreed to electronically, or, if agreed to orally, the call must be recorded and the lender must retain the recording and send a document to the consumer memorializing the authorization.²⁵
- Lenders may also initiate new payment attempts after two have failed if the consumer requests a "single immediate payment transfer" or the consumer authorizes "a one-time electronic fund transfer or provides the underlying signature check to the lender" after the date by which the lender sent the required notice.²⁶ A "single immediate transfer payment" is an electronic transfer initiated within one business day of obtaining the consumer's consent for a one-time transfer, or by processing a signature check through the check or ACH systems within one business day of receiving the check.²⁷

Ultimately, we believe this rule should be dramatically modified, if not rescinded for the following reasons:

1. The Rule's Payments Provisions Rely on Cherry-Picked Stale Data to Address Excessive Account Charges That Have Already Been Addressed Through NACHA Rule Changes and Other Reforms.

a) Changes to The NACHA System Have Obviated the Need for the Rule

¹⁸ Id. at 1528 (12 C.F.R. § 1041.7)

¹⁹ Id. at 1528, 1530 (12 C.F.R. §§ 1041.8(b), (a)(1)).

²⁰ Id. at 1530 (12 C.F.R. § 1041.8(b)).

²¹ Id. at 1543 (12 C.F.R. § 1041.9(c)).

²² Id. at 1531 (12 C.F.R. § 1041.8(c)).

²³ Id. A failed payment initiated pursuant to a specific authorization may be re-presented after the date included in the authorization so long doing so would not violate the prohibition on attempting withdrawals after two consecutive failed attempts. Id.

²⁴ Id. (12 C.F.R. § 1041.8(c)(3)(ii)).

²⁵ Id. at 1533 (12 C.F.R. § 1041.8(c)(3)(iii)).

²⁶ Id. at 1534 (12 C.F.R. § 1041.8(d)).

²⁷ Id. at 1529 (1041.8(a)(2)).

In September 2015 NACHA established new rules regarding return thresholds – merchants were permitted to present items for payment no more than three times (an initial presentment, plus two re-presentments if the initial payment fails). These NACHA limitations are targeted at the same concern that the payment provisions of the Small Dollar Rule are intended to address, but in a more effective manner than the Rule. These return thresholds give lenders every incentive not to initiate repeated debits that would harm borrowers, thereby rendering the Rule unnecessary. Despite the stringency of the NACHA thresholds, lenders could be in compliance with them but prohibited by the Rule from initiating a payment withdrawal attempt. As a result, the Rule would impose hardships that outweigh any benefits to consumers.

For example, section 1041.8(b) prohibits a lender from attempting to withdraw payment from a consumer's account in connection with a covered loan after two consecutive payment transfer attempts that fail due to a lack of sufficient funds. In addition, section 1041.7 declares a lender's violation of this prohibition to be an unfair and abusive practice. Exceptions apply if the lender obtains a new and specific authorization from the consumer to make further withdrawals from the account.²⁸ These payment restrictions apply to any form of payment transfer.

In developing the Rule, the Bureau focused primarily on a single potential consumer harm associated with covered loans. This harm arises if lenders make repeated unsuccessful attempts to debit consumer accounts for repayment and, as a potential consequence, consumers may incur nonsufficient funds (NSF) fees, or have their accounts closed.²⁹

While NSF fees and account closures raise legitimate concerns, the Bureau seemingly ignored NACHA's comments detailing the dramatic changes in return rates following the updates to its Operating Rules in 2015 that led to major improvements.³⁰ Their comments detailed that the return rate for ACH debits dropped to 1.28% in 2015, a decrease from 2.44% in 2004, and the rate of unauthorized debits dropped to 0.030% in 2015, from 0.065% in 2004. In addition, the NSF return rate for ACH debits fell by 21%, and a larger 31% for online payments since 2012. These improvements came despite a "26% increase in overall ACH Network volume through 2015, and a 38% increase in online payment activity," since 2012. According to NACHA, "All of these successes are due to the strong and continued support of financial institutions to [ensure] the ongoing integrity of the ACH Network." To reiterate, the CFPB's 2016 study relied on data from 2011 and 2012, but it is clear that even by 2017, the CFPB's data was outdated and stale. In the intervening decade, NACHA has repeatedly strengthened its rules, which lenders must adhere to or potentially lose the use of this network.

Quite simply, the Bureau's entire analysis related to the efficacy of the NACHA rules is no longer relevant; there is more than a decade of data on whether and how NACHA rules affect lender behavior regarding representment of failed payment attempts.

²⁸ 12 C.F.R. § 1041.8(c) and (d); *see also* 12 C.F.R. § 1041.7.

²⁹ The CFPB also identified overdraft fees as a potential consumer harm. However, if a consumer incurs overdraft fees, it means that the payment transfer attempt was *successful* and the loan payment was made.

³⁰ [NACHA, the Electronic Payments Association, Official Comment Submission to CFPB Docket No. CFPB-2016-0025/RIN 3170-AA40, September 13, 2016.](#)

b) The Purported Harm From Overdraft and Other Issues Has Already Been Mitigated.

The Rule was premised on a finding that consumers might be harmed by the bank fees resulting from repeated representments. CFPB's own 2023 data shows, however, that fee income from overdraft and NSF fees is down more than 50% from 2016 levels³¹, while according to the CFPB's own figures, the "[v]ast majority of NSF fees have been eliminated," mostly as a result of banks eliminating the practice of charging such fees.³²

Further, the Rule was based in large part on complaints by consumers about lenders debiting their accounts. But the Bureau failed to consider how many of these complaints had merit. These complaints are merely allegations; some may accurately recount the situation and harm suffered by consumers, but others may omit crucial facts or do not accurately portray the interaction between the consumer and the company.³³ Setting aside questions around the validity of the complaints, there has been a marked shift in the volume of complaints in these categories. According to the Bureau, from November 2013 through December 2016, the Bureau received 16,600 complaints related to payday loans, and nearly 10%, or roughly 1,660, of those complaints were identified by the consumer as either "can't stop lender from charging my bank account" or "lender charged my bank account on wrong day for wrong amount."³⁴ By contrast, looking at the three most recent years of report data from 2021 to 2023, this volume has substantially declined (even though the payments provisions were not implemented during two litigation stays).³⁵ During these three years, complaints related to payday loans in the two categories³⁶ focused on by the Bureau totaled only 350, representing a roughly 80% decline.³⁷ This sharp decline has taken place while the trend of total annual complaint volume handled by

³¹ CFPB, "Data Spotlight: Overdraft/NSF Revenue in 2023 down more than 50% versus pre-pandemic levels, saving consumers over \$6 billion annually," (Apr. 24, 2024).

³² CFPB, "Data Spotlight: Vast majority of NSF fees have been eliminated, saving consumers nearly \$ billion annually," (Oct. 11, 2023)

³³ In fact, the CFPB disclaims on its consumer complaint website that "This database is not a statistical sample of consumers' experiences in the marketplace and these complaints are not necessarily representative of all consumers' experiences with a financial product or company. Complaints are not "information" for purposes of the Information Quality Act." The CFPB further disclaims that "Complaint narratives are consumers' descriptions of their experiences in their own words. Consider what conclusions may be fairly drawn from reading consumers' descriptions of their experiences. We do not adopt their views or verify that their experiences are accurate or unbiased." See <https://www.consumerfinance.gov/data-research/consumer-complaints/>.

³⁴ Final Rule at 961.

³⁵ (While it is not possible to fully replicate the CFPB's internal calculations from outside the Bureau, a review of Consumer Response Annual Reports from 2014-2016 yield very similar results which is compared to 2021-2023) CFPB Consumer Response Annual Reports 2021- 2023; CFPB Consumer Response Annual Reports 2014-2016;

³⁶ Id (In the three most recent annual reports, the CFPB slightly reworded the two categories to (1) Can't stop withdrawals from your bank account" and (2) "Money was taken from your bank account on the wrong day or for the wrong amount.")

³⁷ Id

the Bureau has risen exponentially over that same time period: there were roughly 291,000 total complaints in 2016, compared with 1,348,000 total complaints in 2023.³⁸

The Bureau also promulgated the payment provisions in part because of its belief that “consumers often face considerable challenges in issuing stop-payment orders or revoking authorization as a means to prevent lenders from continuing to attempt to may payment withdrawals from their accounts.”³⁹ While the final rule did offer a smattering of anecdotes about “various lender practices” that make it difficult for borrowers to revoke authorization, and potential practices at depository institutions that impose costs on consumers for taking those steps,⁴⁰ the Bureau undertook no systemic analysis to try and understand the prevalence of those barriers, or whether they are even barriers at all. There was no survey of borrowers to understand how many of them, if any, tried to revoke authorization from the lender but were unsuccessful for some reason, or the percentage of borrowers who would have instructed their banks to not honor lender-initiated payments but were deterred from doing so by bank-imposed fees or other bank practices. The Bureau did not even attempt to quantify the total amount of fees paid by borrowers to try and stop lender-initiated withdrawals. Without that kind of rigorous analysis of actual consumer understanding of lender and bank practices (and associated costs and benefits), the Bureau was engaging in nothing more than speculation.

To put it bluntly, the entire basis of the 2017 Rule is no longer relevant: overdrafts have declined substantially, consumer complaints about lender payment practices have declined substantially, and there was never any rigorous analysis of whether other lender payment practices imposed sufficient harm on consumers to justify the draconian measures imposed by the Rule.

2. The Rule’s Payments Provisions Apply Restrictions to Debit Cards Without Any Corresponding Benefit to Consumers.

The Small Dollar Rule’s prohibition on a lender from making a third attempt at withdrawing payment after two failed attempts applies equally to all methods of electronic payment, including through automated clearing house (ACH), remotely created checks (RCC), signature checks, and debit cards.⁴¹ This is a flawed approach, since debit cards operate differently than other methods. When a lender attempts to withdraw a payment using a debit card and the borrower’s deposit account lacks the funds for the payment, the bank will deny the payment without imposing an insufficient funds (“NSF”) fee on the borrower.

Given that reducing the number of NSFs caused by small dollar loans was the CFPB’s primary articulated reason for imposing the Rule’s payments provisions, there is no justification for including debit card payments.

It is within the scope of these provisions. The Rule’s prohibition on withdrawal attempts by means of debit card payments after two failed attempts imposes the hardships described earlier without providing any benefit to consumers. Additionally, it is not possible for a lender to

³⁸ CFPB Consumer Response Annual Report 2023 and CFPB Consumer Response Annual Report 2016,

³⁹ Final Rule at 996

⁴⁰ Id. at 996-97

⁴¹ See 12 C.F.R. § 1041.8(a)(1)(i).

determine whether a debit card number is associated with a bank account that may already have a “failed payment transfer”— thus, lenders are left to guess whether a debit card transaction is being attempted from the same consumer account for the purposes of tallying failed payment transfers.

3. The Rule’s Payments Provisions Unreasonably Apply Across Separate Installments of Multi-Payment Installment Loans

The Rule arbitrarily limits payment-transfer attempts across separate installments of a multi-payment installment loan, even though those installments are typically spaced two weeks or a month apart and typically occur after the borrower’s account has been credited with a new deposit (such as a biweekly or monthly paycheck). Because those payment-transfer attempts do not raise the concerns underlying the payments provisions, it is further evidence that the Rule’s requirements conflict with its rationale.

The Bureau made clear during the rulemaking that it was concerned with “multiple attempts to collect payment on the same day” or “within a short period of time,” which it viewed as “contributing to the unpredictable nature of how payment attempts will be made and further exacerbating fees on consumer accounts.”⁴² The Bureau even contrasted the disfavored practice of close-in-time payment attempts with attempts that occur “on days when the account receives a recurring deposit” (such as a paycheck).⁴³

Payment-transfer attempts on subsequent installments of a multi-payment installment loan do not present the concerns that the Bureau claimed as the basis for the payment’s provisions. Longer periods between installments leave consumers ample opportunity to avoid fees by replenishing funds or renegotiating the loans’ terms. In particular, loan installments are typically timed to correspond to the borrower’s employment income. Additionally, because each installment payment is a separate transaction, no reasonable consumer would be surprised by a lender’s subsequent execution of a preauthorized transfer attempt across multiple installments.

4. The Small Dollar Rule’s Requirements to Obtain Reauthorization for Payments Will Frustrate Consumers’ Reasonable Expectations, Hinder Their Ability to Manage Their Finances, Impose Operational Hardships, and Result in Loans Going into Collections.

Authorization of recurring payments is a convenience to the consumer. Millions of consumers choose automatic debits to pay mortgages, credit card balances, insurance premiums, condo fees, phone, internet, and cable bills, as well as small dollar loans. This widespread consumer use of automatic recurring debits demonstrates that consumers understand how such automated repayment features work and find them more convenient and, in many cases, less costly than their alternatives.⁴⁴ Consumers want and expect the option to authorize automatic recurring payments to lenders, as they do with many other financial and non-financial products.

⁴² [Final Rule at 949](#)

⁴³ [CFPB “Online Payday Loan Payments, April 20, 2016](#)

⁴⁴ Consumers can schedule recurring payments to optimize payment success based on their cashflow. Conversely, other alternatives such as paying with checks via mail can be less predictable with higher costs.

In particular, consumers expect that when they authorize recurring debits from their accounts, their authorizations are valid and will not be dishonored by lenders. We know of no other financial or non-financial product that is subject to a regulatory requirement to obtain a new payment authorization after a particular number of failed attempts.

Borrowers are not likely to understand or appreciate the inconvenience of having to do so only for covered loans as a result of the Rule's payments provisions.

Moreover, the unexpected and unilateral revocations of borrowers' payment authorizations resulting from the Small Dollar Rule's payments provisions would accelerate the very harm the Rule seeks to alleviate. Nothing in the Rule *requires* the lender to send a payment reauthorization request. Many lenders will simply proceed to collections after two failed attempts at withdrawing payments, rather than incur the high costs of additional disclosures. Those lenders that seek to obtain payment reauthorization from a borrower in a timely manner may receive no response, even if the borrower intends to make a payment. For example:

- the borrower may not understand or respond to the request, given prior authorization;
- the borrower may not notice the request;
- work demands may leave the borrower unable to contact the lender during business hours;
- the borrower may be traveling; or
- the borrower may not be able to find an alternative payment arrangement in time for the next payment.

When borrowers fail to respond to a request for reauthorization, their accounts are routinely placed in collections.

As a result, even where a borrower wanted to make the next payment through prior authorization, the Small Dollar Rule would override the borrower's choice of payment and result in the borrower defaulting or becoming delinquent on the loan, accruing additional interest and penalties, and/or having negative information reported to a registered information system or credit reporting agency. Furthermore, the borrower may not be able to access additional credit when their prior loan is in collections. Each of these hardships could be avoided or deferred if the Small Dollar Rule did not unilaterally revoke the borrower's payment authorization. In this way, the Rule would exacerbate the harm that it was intended to mitigate.

The Rule also works against borrowers' ability to set and control the payment schedule that works best for them. In fact, the CFPB issued a research paper that found "*[m]any respondents said they fall behind on bills because of a timing mismatch between the arrival of income and billing date,*" and that "*empowering consumers to do something as simple as changing bill due dates to better line up with income could help some consumers better manage their cash flow.*"⁴⁵ However, the restrictive timelines for the First Payment Notices and Unusual Payment Notices under the Small Dollar Rule (i.e., no later than three business days prior to initiating the payment transfer) do not allow adequate flexibility when a customer is attempting to set up a recurring

⁴⁵ <https://www.consumerfinance.gov/data-research/research-reports/consumer-insights-paying-bills/>

ACH payment schedule or make an ad-hoc payment on a date less three days from the date of said payment.⁴⁶

- For example, a customer contacts a lender to set up a series of recurring ACH payments to begin in two days when the customer is receiving a paycheck. To be in full compliance with the rule, the lender would have to tell the customer “No” because they are unable to send the First Payment Notice three days in advance.
- Similarly, if a customer’s recurring ACH payment is two days from now, but the customer wants to make a payment today because he or she has extra money, the Rule would require the lender to tell the customer they cannot make a payment because they would not be in compliance with the three-day advance notice requirement.
- Lastly, if a customer is calling in to change a payment date or alter his or her payment method less than three days before the upcoming payment, the lender would be required to refuse the customer request because the Unusual Payment Notice cannot be delivered three days in advance.

These challenges have already begun to create confusion among borrowers, leading to a noticeable increase in customer complaints and misunderstandings about payment obligations. In particular, there is significant customer confusion regarding the Unusual Withdrawal Notice, with many interpreting the required model language as a sign of fraudulent activity on their account. Additionally, the Small Dollar Rule’s advance notice requirements have limited payment flexibility, often preventing customers from making off-schedule payments or adjusting due dates without risking delinquency. In cases where the required notice timelines cannot be met, scheduled payments must be canceled, which has led to frustration when customers fall past due as a result. There have also been complaints following the mandatory revocation of AutoPay after two failed attempts, as many customers are unaware that future payments will not be processed automatically, leading to unintended missed payments.

5. Payment Reauthorization Notices Will Overwhelm Consumers and Create Opportunities for Bad Actors to Defraud Consumers.

Existing federal and state laws require lenders to provide an array of notices and disclosures in connection with small dollar loans. The Small Dollar Rule will add greatly to that dynamic, and the timing of some of these notices will be unpredictable. The sheer number of notices and disclosures can overwhelm consumers and make it less likely that consumers read any individual notice, including a request to reauthorize payments from their account. As a result, consumers may bear the harmful consequences of their loans going into collections more often than the CFPB assumes.

Additionally, the volume and inconsistent frequency of notices and disclosures that lenders are required to send under the Small Dollar Rule creates opportunities for sophisticated fraudsters to try to confuse borrowers by sending unsolicited payment authorization requests. Borrowers will also become more vulnerable to scam emails that ask for their account information for the

⁴⁶ [§ 1041.9 Disclosure of payment transfer attempts](#)

ostensible purpose of reauthorizing payments on a small dollar loan. Because it will become more commonplace for legitimate lenders to send payment reauthorization requests, borrowers will have fewer reasons to question the veracity of these types of messages and may mistakenly provide account information to imposters, leading to their bank accounts being drained and often causing irreparable injury.

6. The Rule's Reauthorization Requirement Will Decrease the Availability of Credit.

Lenders' underwriting is based on a borrowers' ability to repay and the collection of those payments. Payment authorizations generally enhance creditworthiness, which allows lenders to extend credit to populations that may not otherwise qualify for bank loans or other forms of credit. Because the Rule holds the small dollar lending industry to a stricter repayment standard than any other industry in the nation, its continued implementation will seriously impact access to credit for those consumers most in need. Cutting off lenders' ability to attempt a third payment will increase credit risk, making lenders less willing to lend to consumers with poor credit histories without increasing interest rates and fees.

In 2020, the Bureau rescinded the Mandatory Underwriting Provisions of 12 CFR part 1041 based on "the dramatic impact on consumer choice and access to credit that consumers prefer." If the Bureau is going to restrict a lender's ability to collect, that will have an impact on the risk profile of certain consumers and ultimately limit their access to credit. Like the Mandatory Underwriting Provisions of the Small Dollar Rule, the payments portion should be rejected because of the impact it will have on access to credit.

7. The CFPB Stopped Research on New Disclosures That Could Have Benefited Borrowers

As noted above, in July of 2020, the Bureau rescinded the underwriting provisions in the 2017 Payday Rule. In that amendment to the Rule, the Bureau said it believed "that disclosures constitute a more promising avenue for research," and indicated that it intended to pursue further studies on the impact of disclosures.⁴⁷ In a subsequent request to the Office of Management and Budget, the Bureau elaborated on this work saying, "[r]espondents will review disclosure forms and be asked questions about their impressions of the form, comprehension of information presented, usability, and decision making."⁴⁸ The Bureau went on to say the decision making questions would "focus on how participants use the information given to assess the cost, payment and timing of the loan." The CFPB said the results of the testing could prompt the Bureau to move forward with further rulemaking on disclosures. While this testing was estimated to conclude September 2021, the Bureau's leadership during the Biden Administration acquiesced to the requests of consumer activists who lobbied to have the testing terminated. At a minimum the Bureau should resume that testing to determine the efficacy of the test disclosures before imposing these onerous requirements on small dollar lenders.

Given all of the above issues with the payment provisions of the 2017 rule and the data on which they are based, OLA would encourage the repeal of the payment provisions of the Small Dollar

⁴⁷ [Payday, Vehicle Title, and Certain High-Cost Installment Loans- Revocation Rule](#) at 170

⁴⁸ [Consumer Financial Protection Bureau Notice and Request for Comment in Accordance with the Paperwork Reduction Act, November 5, 2020](#)

Rule and instead pursue a more practical solution designed to meet consumers' small dollar credit needs.

OLA appreciates this opportunity to offer input on these key issues. If you have questions or need additional information, please feel free to contact me at mday@OLADC.org.

Respectfully submitted,

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